

Conflict of Interest



Does my lawyer have a conflict of interest?

Lawyers have a duty of care to look after their clients' interests. The *Legal Profession (Solicitors' Conduct) Rules 2020* include rules about how conflicts of this duty must be managed. This fact sheet explains how conflicts of duty may arise in your dealings with a lawyer or legal practice, and what should happen if there might be a conflict.

Common conflicts of interest

Conflict of interest in legal practice can arise in many different ways.

- Is representing one client against a former client;
- is representing two or more clients with differing interests (whether in the same legal matter or separate legal matters); or
- has business or personal interests that are in conflict with the interests of a client.

Lawyers acting against a former client¹

The lawyer–client relationship does not completely end when a legal matter concludes or when a client changes their lawyer. Lawyers and legal practices have an ongoing duty of confidentiality to former clients.

However, your former lawyer working for a client on the other side of a matter involving you does not necessarily amount to a conflict of duties. Your former lawyer may be able to act for a new client against you if that lawyer or law practice:

- does not have any confidential information about you which is relevant to the current matter; or

- has obtained informed written consent from you that you understand they will be acting for the other side in the matter; or
- has established an effective information barrier (this is explained below).

You can give your consent to this arrangement if you are confident that no confidential information could be used against you and if you are sure this is a completely separate matter to any previous dealings you had with that lawyer.

Information barriers

Information barriers can be used by legal practices to isolate lawyers who have conflicts. The barrier prevents them from being involved in or influencing a matter concerning one of their former clients. The courts recognise that these information barriers, if enforced effectively, can be sufficient to prevent confidential information from being misused.

An example of when this might occur is when a lawyer moves from one legal practice to another, and their new employer is acting against one of the lawyer's former clients. It can also arise in regional areas where there are few law practices for consumers to choose from.

Examples:

Q. My former lawyer acted for me 5 years ago when I purchased my business. One of my customers is now suing me for an unpaid debt. Can my former lawyer act for them?

A. Although you are no longer a client of your former lawyer, there is still a duty of confidentiality that outlasts the lawyer client relationship. This means that

¹ Rule 14 *Legal Profession (Solicitors' Conduct) Rules 2020*

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if your former lawyer obtained confidential information about you during the purchase of your business and that confidential information could be used against you, your former lawyer should not act for your customer to recover the debt.

Q. My lawyer has acted for my partner and I for a number of years including selling and buying our last house and holding our wills. I have separated from my partner, can my lawyer act for me against my partner in family law proceedings?

A. If your lawyer holds confidential information about both you and your partner which would be relevant to family law proceedings, then your lawyer should not act for you or your partner in those circumstances.

Lawyers acting for more than one client²

In some situations lawyers may act for more than one party in the same legal matter, as long as they comply with the Rules. This protects both the lawyer and the clients in the event that the clients' interests differ, even if their interests start out the same.

There will be many situations where the same lawyer will not be able to act for both parties because the clients' interests are opposed, such as when one client is taking legal action against another client. Where a lawyer or legal practice does act for both sides in a legal matter it most commonly occurs in business and property transactions and conveyancing.

If your lawyer or law practice wants to act for both you and another party in the same matter, and your interests and the other party's interests might conflict, the lawyer or law practice cannot act for both of you unless:

- Each client is aware that the lawyer or law practice is acting for the other clients also; and
- Each client has given informed consent to the lawyer or law practice to allow them to act for all the parties involved.

If your lawyer or law practice holds confidential information about you that might be relevant to another of their clients' legal matters and detrimental to you if disclosed, they must stop acting for the other

client. The only exception is if you and the other client give informed consent to the lawyer to keep acting, and the law practice and lawyers involved have established an effective information barrier.

Likewise, if a lawyer or law practice finds that a conflict arises between the interests of two or more of their clients' interests, the lawyer or law practice must cease acting for one or both of the parties immediately. The lawyer or law practice may still represent one party provided their duty of confidentiality is not put at risk and the parties have given their informed consent to the arrangements.

Lawyers who fail to obtain fully informed consent from their clients before commencing to act for multiple parties in a matter risk facing disciplinary action.

Conveyancing example:

Q. Is it alright for my lawyer to act for me and the purchaser in the sale of my family home?

A. Your lawyer can act for both of you in a simple real estate transaction, but both parties must be aware that they have the same lawyer, and the lawyer may be prevented from disclosing the full knowledge that the lawyer has of information relevant to the transaction. The lawyer may also be prevented from giving advice to any one of the parties if the advice is contrary to the interest of the other party. Your lawyer must stop acting for all the parties if they have to act contrary to one of the parties interests. For example if you wish to withdraw from the contract in circumstances which is contrary to the purchaser's interest, your lawyer will need to stop acting for both of you.

Lawyers' interests conflicting with their client's interests³

Lawyers and legal practices must not allow their own interests to come into conflict with the interests of their clients.

This means that if your lawyer has a business or personal interest in the matter where they are acting for you, and that interest is not in your best interests, the Rules require your lawyer to stop acting for you.

² Rule 15 *Legal Profession (Solicitors' Conduct) Rules 2020*

³ Rule 16 *Legal Profession (Solicitors' Conduct) Rules 2020*

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Lawyers must not exercise any undue influence over their clients to gain a benefit for themselves or their law practice. Your lawyer is entitled to fair payment for their legal services but must not try to receive benefits above that fair payment.

Lawyers cannot borrow money from their current or former clients, except in very limited circumstances (such as when their client is a bank). Lending money to clients is not prohibited, however it may create ethical concerns for the lawyer, particularly if a dispute arises over the repayment of that loan.

The Rules are not breached when a lawyer prepares a will for a client appointing themselves or someone they are associated with as executor, providing they obtain written consent from the client which shows the client was informed about any financial entitlement the executor will have (such as commission or legal costs to administer the estate), and that the client could appoint an executor who might not charge a commission.

There are limited circumstances where a lawyer can receive a referral benefit or commission from a third party, providing the client is fully informed and consents to the benefit.

Disclosing your information⁴

In Tasmania, the Rules require your lawyer to not disclose any information they have obtained about your matter without your consent, except in strictly limited circumstances.

The information contained in this fact sheet does not constitute legal advice.



Further information

If you have any questions or require further information, please contact the Legal Profession Board of Tasmania.

⁴ Rule 13 *Legal Profession (Solicitors' Conduct) Rules 2020*



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